

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0406

In re: Robert Morales Cattle Company,
d/b/a K-M Cattle, and Robert Morales,

Respondents

Default Decision and Order

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.) (Act), by a Complaint filed on September 15, 2011, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (Complainant), alleging that Respondents Robert Morales Cattle Company, d/b/a K-M Cattle, and Robert Morales willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.) (Regulations).

On September 15, 2011, copies of the Complaint were sent to Respondents by certified mail. Respondent Robert Morales was served with the Complaint, individually and as an officer, director, and registered agent of Respondent Robert Morales Cattle Company, d/b/a K-M Cattle, on September 19, 2011. Complainant's attorney also sent a letter dated September 20, 2011, and a proposed consent decision to Respondents Robert Morales, individually and as an officer, director, and registered agent of Respondent Robert Morales Cattle Company, d/b/a K-M Cattle by certified mail. Respondents were informed in the letter of September 20, 2011 that they could file an answer to the Complaint and request a hearing or that they could dispose of the matter by signing the proposed consent decision. Respondents did not respond to the letter and proposed

consent decision sent by Complainant's attorney.

On October 14, 2011, a Show Cause Order was entered directing the parties to show cause if any there be why a Default Decision and Order should not be entered. The Petitioner responded, filing a Motion for a Default Decision. The Respondents filed an untimely response which admits in part the untimely payments alleged in the Complaint.

Respondents failed to file an answer within the time period prescribed by the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136) (Rules of Practice), and upon Complainant's motion, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Robert Morales Cattle Company, d/b/a K-M Cattle (Corporate Respondent), was a corporation organized and existing under the laws of the State of Utah. Corporate Respondent's corporate status expired on or about July 6, 2010, due to its failure to file a renewal. Corporate Respondent's current mailing address is in care of its registered agent, Robert Morales, in the State of Utah.

2. At all times material to the Complaint, Corporate Respondent was:

- (a) Engaged in the business of buying and selling livestock in commerce as a dealer for its own account or for the account of others;
- (b) Engaged in the business of a market agency buying livestock in commerce on a commission basis;
- (c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account or for the account of others; and

(d) Registered with the Secretary of Agriculture as a market agency to buy livestock in commerce on a commission basis.

3. Robert Morales (Individual Respondent) is an individual residing at all time material to the issues herein in the State of Utah.

4. At all times material to the Complaint, Individual Respondent was:

- (a) President of Corporate Respondent;
- (b) Director of Corporate Respondent;
- (c) One hundred percent owner of Corporate Respondent;
- (d) Registered agent of Corporate Respondent; and
- (e) Responsible for the direction, management, and control of Corporate Respondent.

5. On April 1, 2008, the Western Regional Office of Complainant mailed Individual Respondent a Notice of Violation letter. Individual Respondent was served with the Notice of Violation letter on April 3, 2008. In the Notice of Violation letter, Individual Respondent was notified that he had failed to pay for livestock in a timely manner in violation of section 409 of the Act (7 U.S.C. § 228b). Individual Respondent was also notified that he had failed to maintain a means to trace his dealer transactions from purchase to sale by failing to maintain all purchase and sales invoices, load make-up sheets, and trucking records as required by section 401 of the Act (7 U.S.C. § 221). Individual Respondent was further notified that he had failed to zero balance his scale, print scale tickets when the scale was zero balanced, identify the name of the buyer on his scale tickets, use serially numbered scale tickets, and keep copies of executed or voided scale tickets in violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.49 and 201.73-1 of the Regulations (9 C.F.R. §§ 201.49, 201.73-1).

6. Corporate Respondent, under the direction, management, and control of Individual Respondent, in connection with its operations subject to the Act, commencing on or about June 3, 2008, and continuing through July 31, 2008, in approximately 23 transactions, purchased livestock in the total amount of approximately \$293,211.00 and failed to pay, when due, the full purchase price of such livestock. Corporate Respondent's payments were made between approximately 1 and 160 days late. Corporate Respondent purchased livestock from the following sellers: (1) Producers Livestock Marketing Association, Jerome, Idaho; (2) Twin Falls Livestock Commission, Co., Twin Falls, Idaho; (3) Burley Livestock Auction, LLC, Burley, Idaho; (4) Blackfoot Livestock Commission, Co., Blackfoot, Idaho, (5) Dale T. Smith & Sons Meat Packing Co., Draper, Utah; (6) The Stockman's Market, Inc., Visalia, California; and (7) Shasta Livestock Auction Yard, Cottonwood, California.

7. Corporate Respondent, under the direction, management, and control of Individual Respondent, in connection with its operations subject to the Act, failed to keep and maintain records which fully and correctly disclosed all the transactions involved in its business as a dealer and market agency as required by section 401 of the Act (7 U.S.C. § 221). Specifically, Corporate Respondent failed to keep and maintain load make-up sheets, all purchase and sale invoices, all scale tickets, and all bank statements.

8. Corporate Respondent, under the direction, management, and control of Individual Respondent, in connection with its operations subject to the Act, failed to issue scale tickets in conformity with the requirements of section 201.49 and 201.73-1 of the Regulations (9 C.F.R. §§ 201.49, 201.73-1). Specifically, Corporate Respondent issued scale tickets that were not serially numbered, did not identify the buyer of the livestock, did not identify the name, initials, or

number of the person who weighed the livestock, and contained no record of zero balancing per the requirements of section 201.73-1 of the Regulations (9 C.F.R. § 201.73-1).

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Individual Respondent is the alter ego of Corporate Respondent.
3. By reason of the foregoing Findings of Fact, Respondents willfully violated sections 312(a), 401 and 409 of the Act (7 U.S.C. §§ 213(a), 221, 228b) and sections 201.49 and 201.73-1 of the Regulations (9 C.F.R. §§ 201.49, 201.73-1) by failing to keep and maintain records that fully and correctly disclosed all transactions involved in their business.

Order

1. Respondent Robert Morales Cattle Company, d/b/a K-M Cattle, and Respondent Robert Morales, their agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from:
 - a. Failing to pay, when due, the full purchase price of livestock; and
 - b. Failing to issue scale tickets in strict conformity with the requirements of sections 201.49 and 201.73-1 of the Regulations (9 C.F.R. §§ 201.49, 201.73-1).
2. Respondents shall keep and maintain accounts, records, and memoranda, which fully and correctly disclose the true nature of all transactions involved in their business subject to the Act as required by section 401 of the Act (7 U.S.C. § 221), including, but not limited to, load make-up sheets, all purchase and sale invoices, all scale tickets, and all bank statements.
3. In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents are assessed, jointly and severally, a civil penalty in the amount of Sixteen Thousand Five Hundred Dollars (\$16,500.00).

4. This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondents, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies of this Decision and Order shall be served upon the parties.

December 27, 2011

Peter M. Davenport
Chief Administrative Law Judge